

ARIZONA TAX COURT

TX 1997-000075

03/07/2003

HON. PAUL A KATZ

CLERK OF THE COURT

B. Navarro

Deputy

FILED: 03/10/2003

HELEN H LADEWIG

RANDALL D WILKINS

v.

ARIZONA DEPT OF REVENUE

MICHAEL F KEMPNER

EUGENE O DUFFY PHV  
ONEIL CANNON & HOLLMAN, SC  
STE 1400 111 W WISCONSIN AVE  
MILAUKEE WI 53202-4803

**JUDGMENT**  
**and**  
**ORDERS**

The Court having reviewed Plaintiffs' and Class Counsel's Combined Motion to Correct Clerical Mistake in the Judgment and Motion for Settlement Administration Conference Pursuant to Paragraph 28 of the Approved Stipulation Settlement and the memoranda of the parties filed incident thereto; and good cause appearing,

**IT IS ORDERED** amending the Opinion of this Court to reflect that the past and future costs which should have been awarded in this matter should be in the amount of \$1,250,000.00 rather than \$1,061,815.00, and accordingly, the total award of attorneys' fees and costs should be \$16,250,000.00. Judgment is hereby entered in this amount which shall bear interest at the maximum rate allowable by law until paid in full.

Class Counsel further contends that this Court has failed to take into consideration future costs and attorneys' fees that might be incurred in this matter. This is, in part, accurate and the Court has set aside reserves to cover anticipated future costs and attorneys' fees, pursuant to Paragraph 5 of the Settlement Agreement. However, Class Counsel's contention that not less than 20,000 hours of attorney time and not less than 25,000 hours in paralegal time will be required to advise/represent class members and administer refund monies for class members is wildly speculative. In light of the fact that there were only five objections filed to the proposed settlement by two law firms, there has been virtually no interest in this litigation by any class

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members, with the exception of these five Objectors, in the nearly twelve years that this litigation has been pending. Since the Class is now completely defined and is bound by this Court's approval of the settlement formula, this Court can anticipate very few circumstances in this litigation where conflicts are likely to arise between the class and the State requiring assistance of Class Counsel. The Court would also note that it has already appropriated \$800,000.00 to Class Counsel for the hiring of a firm to answer routine inquiries of class members and direct them to the Arizona Department of Revenue or Class Counsel for necessary follow-through. The majority of the administrative costs in identifying, calculating and paying such refunds will be borne by the Arizona Department of Revenue with little needed input from or review by Class Counsel. In circumstances in which taxpayers entitled to refund are deceased or divorced and there is disagreement between heirs or former spouses, these are matters which will be resolved without the participation of Class Counsel other than perhaps the need to interplead such funds with the Court. An attempt by Class Counsel to compare this litigation to other class action matters, including various federal retiree litigation matters that have been called to this Court's attention during the previous evidentiary hearing is wholly without merit.<sup>1</sup>

This Court recognizes that the Objectors have appealed this Court's denial of their Objections which were heard and denied on December 16, 2002. This will require Class Counsel to have to file a responding brief (s) and attend a potential oral argument before the Arizona Court of Appeals. Class Counsel's contention that the handling of these appeals will likely take not less than 500 hours of attorney time is simply ludicrous. The handling of the issues raised by Objectors on appeal will be no more difficult or time consuming than the handling of these issues at the trial court and should take no more than 40-100 hours of legitimate attorney time.

Finally, this Court does not conclude that Paragraph 14 of the Settlement Agreement requires future attorneys' fees and costs to be estimated and awarded at this time in a lump sum. Past and future attorneys' fees and costs associated therewith are limited to a maximum of 12% of the \$350 million common fund or \$42 million, with the balance of the \$42 million fee and cost reserve to be distributed to class members on a *pro rata* basis as part of their final 2006 installment payment. This Court finds no compelling reason to award future attorneys' fees and costs until such fees are earned or costs incurred. All future attorneys' fees incurred by Class Counsel should be well documented with Class Counsel to receive reimbursement in an amount not to exceed their regular hourly billing rates for the attorney, paralegal or clerical staff member who perform such future work as these fees will be based upon actual work performed without further risk to counsel as regards their recovery.

Now, therefore,

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<sup>1</sup> This Court would note that Class Counsel could hire an associate and secretary to do nothing but work full time in the administration of the settlement and handling the limited needs of class members for no more than \$150,000.00 per year. Their request for an additional \$16 million to \$22 million in fees is not supported by any credible evidence.

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**IT IS FURTHER ORDERED** that beginning June 1, 2003 and the 1<sup>st</sup> day of each calendar quarter thereafter, or whenever Class Counsel has expended 500 hours of law firm time or incurred more than \$5,000.00 in expenses, whichever is sooner, Class Counsel shall file with the Court an application for supplemental attorneys' fees and/or costs supported by affidavit and a proper accounting which shall be reviewed by this Court in accord with the factors set forth in *Schweiger v. China Doll Restaurant, Inc.*, 138 Ariz. 183 (App. 1983).

The final application and accounting shall be filed with the Court on or before **May 15, 2006**, which shall include an estimate of any anticipated attorneys' fees and costs which Class Counsel reasonably anticipates will be incurred in closing this litigation so that a final fee payment may be authorized from the reserve, with the balance of reserve funds to be distributed to class members in accord with the Settlement Agreement.

/S/ HON. PAUL A KATZ

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JUDICIAL OFFICER OF THE SUPERIOR COURT